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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

INICOM NETWORKS, INC., Individually and
 on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

NVIDIA CORP., DELL INC., and HEWLETT-
 PACKARD CO.,

Defendants.

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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

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COMPLAINT FOR UNLAWFUL, UNFAIR
 AND FRAUDULENT BUSINESS
 PRACTICES; BREACH OF WARRANTIES;
 VIOLATION OF MAGNUSON-MOSS
 WARRANTY ACT, 15 U.S.C. §§ 2301 *et*
seq.; UNJUST ENRICHMENT;
 DECLARATORY RELIEF; and
 DAMAGES

CLASS ACTION

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Inicom Networks, Inc. ("Plaintiff") alleges the following upon information and
2 belief, except as to allegations concerning Plaintiff or his counsel, which are made upon
3 Plaintiff's personal knowledge and are so identified.

4 INTRODUCTION

5 1. This is a class action brought by Plaintiff individually and on behalf of all
6 consumers who purchased, beginning four years prior to the commencement of this action and
7 continuing through the present, Dell or Hewlett-Packard notebook computers containing a
8 defective NVIDIA graphic controller chip (the "Class Notebook Computers"). The defective
9 graphics chips cause consumers' notebook computers to display permanently corrupted images
10 on consumers' computers, including distorted images, lines, garbled characters, artifacts, as well
11 as complete monitor/display failure.

12 2. There is no question the NVIDIA components in the Class Notebook Computers
13 are defective. The Defendants in this case have admitted their products are defective, yet
14 consumers are stuck with the defective computers: no replacements, no refunds, and no
15 compensation from any defendant. Plaintiff purchased a defective Class Notebook Computer
16 from defendant Dell for personal use.

17 3. Defendant NVIDIA manufactures and sells graphics processing units ("GPUs")
18 and multichip packages ("MCPs") for notebook computers. Manufacturers Dell and Hewlett-
19 Packard use NVIDIA graphics chips in certain models of notebook computers. During the past
20 four years, many of the notebook computers Dell and Hewlett-Packard sold to consumers
21 contained defective NVIDIA GPUs and MCPs, which cause many Class Notebook Computers to
22 experience the video and graphics problems described herein, as well as other problems, such as
23 internet connection failures.

1 4. NVIDIA, Dell, and Hewlett-Packard (the “Defendants”) have received thousands
2 of consumer reports and complaints about the graphics and video problems plaguing the Class
3 Notebook Computers.

4 5. Defendants themselves have concluded NVIDIA’s GPUs and MCPs are subject to
5 an unusually high failure rate. In filings with the Securities and Exchange Commission (“SEC”),
6 NVIDIA acknowledges its GPU and MCP products are defective. Further, Dell and Hewlett-
7 Packard admit certain of their notebook computers contain the defective hardware in issue and
8 have gone so far as to publish a list of defective models of notebook computers.

9 6. Although Defendants admit their products are defective, Defendants have failed
10 to remedy the harm consumers have suffered by purchasing the defective Class Notebook
11 Computers.

12 7. What’s more, Defendants are avoiding a necessary recall by recommending
13 consumers download and install a BIOS “update,” which spins the computer’s fan more
14 frequently or continuously. *See* paragraphs 31-42, *infra*. This grossly inadequate “remedy”
15 actually results in additional manifest defects, including, without limitation, degraded battery
16 life, system performance, and major noise in the defective computers. Worse, the “remedy” fails
17 to solve the actual problem. Instead the stopgap measure helps ensure the Class Notebooks will
18 fail *after* the warranty period expires, leaving consumers with a defective notebook and no
19 remedy at all. Finally, even after using defendants’ “remedy,” video performance is still
20 degraded due to unacceptably high heat and part failures.

21 8. Defendants injured Plaintiff and other customers similarly situated throughout the
22 country by misrepresenting the quality of the notebooks they were manufacturing, and by
23 knowingly, recklessly or negligently selling defective notebook computers to consumers.
24 Defendants have earned substantial profits by manufacturing and selling defective Class
25 Notebooks.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 2310(d)(3), and pursuant to 28 U.S.C. § 1332(d)(2), because at least one Class member is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum or value of \$5,000,000.

10. This Court has personal jurisdiction over defendants NVIDIA and Hewlett - Packard because Defendants reside in this District. This Court has personal jurisdiction over defendant Dell because it operates and conducts substantial business in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) because one or more Defendants reside in this District, and the acts upon which this action is based occurred in substantial part in this District.

THE PARTIES

12. Plaintiff Inicom Networks, Inc. is a citizen of New Mexico. Inicom Networks purchased a Dell Latitude D630 notebook computer from defendant and suffered injury in fact as a result of Defendants' unlawful acts and practices.

13. Defendant NVIDIA Corporation is a Delaware corporation with its principal place of business in Santa Clara, California. At all relevant times, NVIDIA operated and conducted business in this District.

14. Defendant Dell Inc. is a Delaware corporation with its principal place of business in Round Rock, Texas. At all relevant times, Dell operated and conducted business in this District.

15. Defendant Hewlett-Packard Co. ("HP") is a Delaware corporation with its principal place of business in Palo Alto, California. At all relevant times, HP operated and conducted business in this District.

8 17. Plaintiff brings this action individually and as a class action under Federal Rule of
9 Civil Procedure 23(b)(2) and (b)(3) on behalf of all persons and entities who purchased Class
10 Notebooks (the “Class”) at any time during the period beginning four years prior to the
11 commencement of this action and continuing through the present (the “Class Period”). The
12 Class excludes Defendants, their officers, employees, representatives, families, and the Court.

13 18. Class members are so numerous that joinder of all members is impracticable.
14 Thousands of individuals and entities bought Defendants' defective computer products, and their
15 claims are similar to Plaintiff's claims.

16 19. Plaintiff's claims are typical of Class members' claims, as Plaintiff and all Class
17 members were similarly injured by Defendants' uniform sale of defective notebook computers
18 and defective graphic chips, and the uniform misrepresentations about the quality of the
19 manufactured notebooks. Plaintiff and Class members have sustained injury and loss from
20 Defendants' wrongful conduct.

20. Plaintiff will fairly and adequately protect the Class's interests. Plaintiff's claims are coextensive with, and not antagonistic to, other Class members' claims. Plaintiff is willing and able to vigorously prosecute this action on the Class's behalf, and Plaintiff has retained competent and experienced counsel, all of whom satisfy Rule 23(g)'s requirements.

21. Common questions of law and fact exist as to all Class members and predominate over questions that affect only individual Class members. Among the law and fact questions common to the Class are whether:

- (a) NVIDIA supplied Dell and HP with defective GPUs and MCPs for use in their notebook computers;
- (b) NVIDIA's GPUs and MCPs failed at unacceptably high rates, were inherently defective, were not of merchantable quality, or would not pass without objection in the trade;
- (c) Dell and HP sold notebook computers that were inherently defective were not of merchantable quality, or would not pass without objection in the trade;
- (d) Defendants, by the misconduct set forth in this complaint, engaged in unfair, fraudulent or unlawful business practices with respect to the advertising, marketing and sale of these notebook computers;
- (e) Defendants negligently, recklessly or willfully violated the law;
- (f) Class members are entitled to damages, and if so, how much; and
- (g) the Class is entitled to injunctive relief.

22. Plaintiff brings this action under Rule 23(b)(3) because the common questions of law and fact set forth above predominate over any issues that may be unique to individual Class members. In addition, the expense of litigating each Class member's claims individually would be so cost prohibitive as to deny Class members a viable remedy. Rule 23(b)(3) certification is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiff envisions no undue difficulty in managing this litigation as a class action. Defendants would or should retain records of the notebook computers that were manufactured with defective NVIDIA GPUs and MCPs. Notice of this action's pendency and any resolution thereof can be accomplished by a combination of publication and direct notice to those Class members whose names and addresses are on file with Defendants.

23. Plaintiff also brings this action under Rule 23(b)(2), because Defendants have acted or refused to act on grounds generally applicable to all Class members, thereby making

1 final injunctive relief concerning the Class as a whole appropriate. Absent appropriate injunctive
2 relief, Defendants will continue to operate their systematic scheme. Defendants' uniform
3 conduct towards Plaintiff and other Class members makes certification under Rule 23(b)(2)
4 appropriate.

5 FACTUAL ALLEGATIONS

6 24. Defendant NVIDIA manufactures and sells graphics processing units (the GPU)
7 and multichip packages (the MCP). GPUs and MCPs are used in notebook computers
8 manufactured and sold by defendants Dell and HP. Many of the notebook computers Dell and
9 HP sold during the Class Period contained defective NVIDIA GPUs and MCPs.

10 25. Despite receiving numerous reports their notebook computers were experiencing
11 video problems, until recently Defendants failed to disclose the unusually high failure rates of
12 NVIDIA's GPUs and MCPs. On July 2, 2008 NVIDIA finally acknowledged the existence of
13 defects in its GPU and MCP products. In a July 2, 2008 Form 8-K filed with the SEC, NVIDIA
14 admitted:

15 On July 2, 2008, NVIDIA Corporation stated that it would take a \$150 million to
16 \$200 million charge against cost of revenue to cover anticipated customer
17 warranty, repair, return, replacement and other consequential costs and expenses
18 arising from a weak die/package material set in certain versions of our previous
generation MCP and GPU products used in notebook systems. All newly
manufactured products and all products currently shipping in volume have a
different and more robust material set.

19 *The previous generation MCP and GPU products that are impacted were*
20 *included in a number of notebook products that were shipped and sold in*
21 *significant quantities. Certain notebook configurations of these MCP and GPU*
22 *products are failing in the field at higher than normal rates.* While we have not
23 been able to determine a root cause for these failures, testing suggests a weak
24 material set of die/package combination, system thermal management designs,
25 and customer use patterns are contributing factors. We have developed and have
made available for download a software driver to cause the system fan to begin
operation at the powering up of the system and reduce the thermal stress on these
chips. We have also recommended to our customers that they consider changing
the thermal management of the MCP and GPU products in their notebook system
designs. We intend to fully support our customers in their repair and replacement
of these impacted MCP and GPU products that fail.

We have begun discussions with our supply chain regarding reimbursement to us for some or all of the costs we have incurred and may incur in the future relating to the weak material set. We will also seek to access our insurance coverage. We continue to not see any abnormal failure rates in any systems using NVIDIA products other than certain notebook configurations. However, we are continuing to test and otherwise investigate other products. There can be no assurance that we will not discover defects in other MCP or GPU products.

26. NVIDIA's announcement failed to specify which GPU and MCP products were defective. NVIDIA's failure to identify the defective models led some vendors to request graphics card manufacturers to recall desktop-based graphics cards using the same NVIDIA GPU chips.

27. In July 2008 HP admitted certain of its notebook computers contained defective hardware and published a list of the defective notebook computers. Included were systems in HP's Pavilion and Compaq Presario computer lines, including HP Pavilion models dv2000/dv6000/dv9000 and Compaq Presario series V3000/V6000 notebooks:

HP Pavilion notebook PC series

Compaq Presario notebook PC series

dv20xx	v30xx
dv21xx	v31xx
dv22xx	v32xx
dv23xx	v33xx
dv24xx	v34xx
dv60xx	v60xx
dv61xx	v61xx
dv62xx	v62xx
dv63xx	v63xx
dv64xx	v64xx
dv90xx	
dv92xx	
dv93xx	
dv94xx	

28. Defendant HP listed symptoms that may make consumers "eligible" for a free repair. HP's website says:

If your computer's product number is listed above, and the notebook PC experiences one or more of the symptoms listed below, contact HP during the

1 Duration of the HP Limited Warranty Service Enhancement to determine whether
2 you are eligible for a free repair.

3 The following symptoms apply to Pavilion dv2000 and Presario v3000 notebooks:

- 4 • The notebook does not detect wireless networks and the wireless adapter
is not detected in the Device Manager.
- 5 • There is no video on the computer LCD panel or external monitor.

6 The following symptoms apply to the dv6000, dv9000 and v6000 series
7 notebooks:

- 8 • The notebook does not detect wireless networks and the wireless adapter
is not detected in the Device Manager.
- 9 • There is no video on the computer LCD panel or external monitor.
- 10 • The notebook has no power and no active LEDs.
- 11 • The notebook does not start.
- 12 • The battery charge indicator light does not turn on when the battery is
installed and the AC adapter is connected.
- 13 • The notebook issues a single beep during boot indicating no power.
- 14 • The external monitor functions but there is no image on the notebook LCD
15 panel.

16 29. Defendant HP further announced a "Limited Warranty Service Enhancement"
17 program for owners of the defective notebooks. On its website, HP sets forth consumer
18 eligibility requirements for the limited warranty program:

19 If you own an HP Pavilion dv2000, HP Pavilion dv6000, HP Pavilion dv9000 or
20 Compaq Presario V3000, Compaq Presario V6000 series computer, are
experiencing no symptoms on your computer, and would like to obtain more
21 information about updating your system to the new BIOS release, please go to the
"Update the BIOS to the latest version" section on this page. If you are
22 experiencing one or more symptoms listed below, and your computer meets the
product criteria listed below, contact HP to determine whether you are eligible for
a free repair.

23 NOTE: This service enhancement program is available in North America for 24
24 months after the start of your original standard limited warranty for issues listed
25 below; otherwise your current standard limited warranty applies. Customers who

1 already have a 24 month or longer warranty period will be covered under their
2 existing standard HP Limited Warranty.

3 30. HP admits the defective NVIDIA products have been a warranty issue since at
4 least November 2007.

5 31. HP's Limited Warranty Service Enhancement program fails to address the defects
6 in its notebook computers. The Limited Warranty Service Enhancement only applies to
7 consumers whose notebooks are already malfunctioning – and malfunctioning in a limited,
8 specific way. For all others who own HP's defective Class Notebooks, HP merely offers
9 consumers a "BIOS" update.¹ The update fails to repair or replace the defective components and
10 unlawfully shifts repair responsibilities to the Class.

11 32. The BIOS update itself is fraught with complications, causes new or additional
12 problems and merely is a temporary band-aid meant to forestall the manifestation of major
13 problems. HP admits:

14 The new BIOS release for your notebook PC is preventative in nature to reduce
15 the likelihood of future system issues. The BIOS updates the fan control
16 algorithm of the system, and turns the fan on at low volume while your notebook
17 PC is operational.

18 33. HP's BIOS update causes the computer notebook's fan to run continuously.
19 Although the BIOS update may lower the thermal stress on the defective NVIDIA components,
20 by running the system fan constantly customers experience a decrease in battery life, increase in
21 system noise, and decrease in computer notebook life – manifesting further defects in the already
22 defective notebook computers.

23 34. The purported BIOS "fix" is no fix at all. The BIOS fix does nothing to repair or
24 replace the defective graphics chips. Instead the BIOS "fix" degrades the functionality of the

25 ¹ "BIOS" stands for Basic Input Output System. The BIOS is computer instruction code, embedded in
26 the computer's hardware, that assists in identifying and initializing the computer's component
hardware.

1 defective notebooks and merely creates a different manifestation of problems in notebook
2 computers at issue past the warranty period.

3 35. Notably, HP excludes from its Limited Warranty Service Enhancement program
4 defective notebook computers that have yet to exhibit one of the specified symptoms.
5 Consumers who bought these defective computers are ineligible for free repairs and cannot
6 exchange their defective notebooks for functional, as-advertised, defect-free computers. As
7 stated on the company's website:

8 If my notebook is not experiencing any of the symptoms described in the support
9 article but is part of the program because it is a listed notebook in the Product
Numbers Included document can I call HP to obtain a free repair?

10 **No.** Only notebooks that are experiencing one or more of the symptoms described
11 in the support article are eligible for a free repair.

12 36. Yet customers may experience this defect but not know the cause, or install the
13 BIOS update and have the defect manifest itself in a different way.

14 37. On or about July 25, 2008, Dell admitted its notebook computers containing
15 NVIDIA GPUs and MCPs were experiencing defects and published a list of faulty notebooks.
16 The hardware defects have affected Dell's Inspiron, Latitude, Precision, Vostro, and XPS
17 product lines. To date, Dell has admitted the following notebook models are defective:

18 Dell Product Name

19 Inspiron 1420
20 Latitude D630
Latitude D630c
Precision M2300
21 Vostro Notebook 1310
Vostro Notebook 1400
22 Vostro Notebook 1510
Vostro Notebook 1710
23 XPS M1330
XPS M1530
24
25
26

38. In a July 25, 2008 blog post, published on its "Direct2Dell" website, Dell reported:

Earlier this month, sites like Ars Technica and ZDNet blogged about NVIDIA's statement regarding a potential issue with some of NVIDIA's Graphics Processing Units (GPUs) used in notebooks. According to NVIDIA, these affected GPUs are experiencing higher than expected failure rates causing video problems. Though this issue is not unique to Dell, some of these affected GPUs are used in certain Dell laptops. That's why I wanted to take a few minutes here to explain the issue and to let customers know what to do next.

The issue is a weak die/package material set, which may fail with GPU temperature fluctuations. If your GPU fails, you may see intermittent symptoms during early stages of failure that include:

- Multiple images
- Random characters on the screen
- Lines on the screen
- No video

Dell recommends that you flash your system BIOS (see links in the table below). Each of these BIOS updates listed in the table below modifies the fan profile to help regulate GPU temperature fluctuations. Note: if you are already experiencing video-related issues like the bullet points above, updating the BIOS will not correct them. Dell will provide support for customers who have experienced GPU failure according to the terms of the system warranty.

These BIOS updates will help reduce the likelihood of GPU issues. New systems are being shipped with the updated BIOS revisions.

39. Dell subsequently updated its blog posting on this issue in response to consumer concerns. The following updates were posted sometime after July 25, 2008:

Update: As Direct2Dell reader foduekid noted, the A09 BIOS update for the XPS M1530 was made available yesterday after I published this blog post. I've updated the table above with the link.

Update 2: I'm getting e-mails and comments that are similar to those of Direct2Dell readers like Customer, fr and barryd. Like I mentioned in one of my responses, this will not be the only blog post on this topic. When I have new details to share, I will share them here. Several of you have expressed concern over potential battery life issues. The reality is that these BIOS updates will not have any noticeable effect on battery life or overall system performance. These updates do not make the cooling fan run all the time. The fan may cycle on more frequently, but when it does, it will run at half or quarter speed.

1 Update 3: Since Kara Krautter unveiled the Vostro 2510 on the Small Business
2 blog yesterday, we've gotten some questions about it since it uses an NVIDIA
3 GPU. Take a look at some of the comments in the Vostro 2510 Engadget post to
see what I'm talking about. The Vostro 2510 will ship with the latest BIOS
updates.

4 If you need help flashing your system BIOS or experience any of the video-
5 related issues listed above, please contact Dell Technical Support. Our teams are
6 committed to working with affected customers to resolve issues on a case-by-case
basis.

7 40. Dell's temporary "solution" also is a BIOS update. Similar to HP, Dell's BIOS
8 update merely powers the notebook's fan far more frequently and at reduced speeds.

9 41. Thus Dell's stopgap "fix" does not repair, replace, cure or remedy the defective
10 graphics chips. Rather than fix or replace the defective components, Dell's inferior "solution" is
11 to run the computer fan more frequently -- at the expense of decreased battery life, increased
12 noise, and decreased computer notebook life. And even with the fix, users still report degraded
13 video performance and video artifacts.

14 42. What's more, despite having admitted the Class Notebook Computers are
15 defective, Dell has failed to extend any kind of warranty or replacement service on the Class
16 Notebook Computers, or the defective parts they contain.

17 43. Thus, Defendants sold consumers defective notebook computers, causing
18 substantial harm and injury to Plaintiff and to Class members. Defendants refuse to remedy the
19 harm customers suffered by substituting functional notebook computers for the defective
20 computers consumers purchased. Defendants also refuse to replace the defective NVIDIA GPUs
21 and MCPs in consumers' notebooks with properly engineered, manufactured, and functioning
22 graphics chips.

23 44. Defendants' *only* "solution" is to spin the computer fans more frequently or
24 continuously. This grossly inadequate "remedy" degrades battery life, system performance,
25 creates major noise in the defective computers, and does not solve the actual problem. Instead
26

1 this stopgap measure helps ensure the Class Notebook Computers will fail at some point during
 2 their useful life, but potentially *after* the warranty period expires, leaving consumers with a
 3 defective notebook computer and no remedy at all. Finally, even after using the “remedy,” video
 4 performance is still degraded due to unacceptably high heat, part failures, and failure of the
 5 BIOS update to fix corrupted computer displays.

FIRST CAUSE OF ACTION

Unlawful, Unfair and Fraudulent Business Practices, California Business and Professions Code §§ 17200 *et seq.* (Against All Defendants)

9 45. Plaintiff, on behalf of himself and all Class members, incorporates and realleges
 10 paragraphs 1-44 as though fully set forth herein.

11 46. Defendants’ practices as alleged in this Complaint constitute unlawful, unfair, and
 12 fraudulent business practices under the UCL, Bus. & Prof. Code §§ 17200 *et seq.*

13 47. Defendants committed unlawful business practices by:

- 14 a. as alleged herein, engaging in conduct that violates the Magnuson-Moss
 15 Warranty Act, 15 U.S.C. §§ 2301 *et seq.*; and
- 16 b. as alleged herein, engaging in conduct that breached express and implied
 warranties.

17 48. Defendants committed unfair business practices by:

- 18 a. engaging in conduct where the utility of such conduct, if any, is
 19 outweighed by the gravity of the consequences to Plaintiff and to other
 Class members;
- 20 b. engaging in conduct that is immoral, unethical, oppressive, unscrupulous,
 21 or substantially injurious to Plaintiff and to other Class members; and
- 22 c. engaging in conduct that undermines or violates the Magnuson-Moss
 23 Warranty Act, 15 U.S.C. §§ 2301 *et seq.* and the other laws detailed
 herein.

24 49. Defendants committed fraudulent business practices by engaging in conduct that
 25 was and is likely to deceive customers acting reasonably under the circumstances. Defendants’
 26

1 fraudulent practices includes, without limitation, failing to disclose or concealing from Plaintiff
2 and from Class members at the time of sale, repair and diagnosis that the Class Notebook
3 Computers were defective in materials and workmanship and that the Class Notebook Computers
4 were likely to fail during their useful life.

5 50. Plaintiff and Class members have suffered injury in fact and have lost money and
6 property as a result of Defendants' unlawful, unfair, or fraudulent practices, in that, among other
7 things:

- 8 a. Class members would not have bought or leased the Class Notebooks at
9 the price that they did;
- 10 b. the Class Notebooks have a lower market value than they otherwise would
11 have if not for the defective NVIDIA GPUs;
- 12 c. Class members have paid for repairs and replacement parts that they
13 would not and should not have paid for; and
- 14 d. Class members were denied their right to receive property free from
15 defect.

16 51. Plaintiff, on behalf of himself and Class members, seeks declaratory and
17 injunctive relief, restitution and disgorgement of all profits obtained from the unfair competition
18 alleged herein and other relief as appropriate.

19 **SECOND CAUSE OF ACTION**

20 **Breach of Express and Implied Warranties** 21 **(Against All Defendants)**

22 52. Plaintiff, on behalf of himself and all Class members, incorporates and realleges
23 paragraphs 1-51 as though fully set forth herein.

24 53. Defendants expressly give warranties by specific words or actions to Plaintiff and
25 Class members, both through the issuance of its written warranty accompanying all its notebook
26 computers and/or its advertising campaigns, product packaging and literature and sales
professionals used to promote the sale and use of these Class Notebook Computers. Defendants

1 warranted to the general public, including Plaintiff and Class members, these Class Notebook
2 Computers were effective, free from material defects in materials and/or workmanship and fit for
3 their intended use.

4 54. Defendants also impliedly warranted to members of the general public, including
5 Plaintiff and Class members, these notebook computers were of merchantable quality, would
6 pass without objection in the trade or business, were free from material defects and reasonably fit
7 for the use for which they were intended by Defendants, namely, for the purpose of mobile
8 computing and other related activities.

9 55. Plaintiff and Class members based their decision on the skill and judgment of
10 Defendants.

11 56. Defendants' warranties became part of the basis of the bargain between Plaintiff,
12 Class members and Defendants.

13 57. Defendants breached their warranties by: (a) selling and leasing Class Notebooks
14 with NVIDIA GPUs and MCPs that were defective in materials and workmanship and are likely
15 to fail during the useful life of such products; and (b) refusing to recall, repair or replace, free of
16 charge, all Class Notebook Computers or any of their defective component parts.

17 58. Plaintiff, on behalf of himself and the Class, provided Defendants with notice of
18 their breach of express and implied warranties. Defendants already were on notice of the defect
19 from complaints and service requests they received from Class members, from repairs and/or
20 replacements of the Class Notebook Computers, and through their own public admissions and
21 internal investigations.

22 59. As a direct and proximate result of Defendants' breach of their warranties,
23 Plaintiff and Class members have suffered damages and continue to suffer damages, including
24 economic damages at the point of sale in terms of the difference between the value of the Class
25 Notebook Computers as promised and the value of the Class Notebook Computers as delivered.

1 Additionally, Plaintiff and Class members either have or will incur economic damages at the
2 point of repair in the form of the cost of repair.

3 60. Plaintiff and Class members are entitled to legal and equitable relief against
4 Defendants, including damages, specific performance, rescission, attorneys' fees, costs of suit,
5 and other relief as appropriate.

6 **THIRD CAUSE OF ACTION**

7 **Breach of Written Warranty Under Magnuson-Moss** 8 **Warranty Act, 15 U.S.C. §§ 2301 *et seq.*** 9 **(Against All Defendants)**

10 61. Plaintiff, on behalf of himself and all Class members, incorporates and realleges
11 paragraphs 1-60 as though fully set forth herein.

12 62. Plaintiff and Class members are "consumers" within the meaning of the
13 Magnuson-Moss Act, 15 U.S.C. § 2301(3).

14 63. Each Defendant is a "supplier" and "warrantor" within the meaning of the
15 Magnuson-Moss Act, 15 U.S.C. § 2301(4)-(5).

16 64. The defective notebook computers at issue are "consumer products" within the
17 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(1).

18 65. Defendants' written affirmations of fact, promises and/or descriptions, as alleged
19 herein, are each a "written warranty" within the meaning of the Magnuson-Moss Act, 15 U.S.C.
20 § 2301(6).

21 66. For the reasons detailed herein, Defendants refuse to recognize or honor their
22 written warranties. Defendants breached their written warranties as the Class Notebook
23 Computers in question failed to perform as represented by Defendants, and thereafter when
24 Defendants refused to honor such warranties. Defendants' conduct caused damages to Plaintiff
25 and to Class members.

1 67. The amount in controversy of each Class member's individual claim meets or
2 exceeds the sum or value of \$25. In addition, the amount in controversy meets or exceeds the
3 sum or value of \$50,000 (exclusive of interest and costs) computed on the basis of all claims to
4 be determined in this suit.

5 68. Resorting to any informal dispute settlement procedure or affording Defendants a
6 reasonable opportunity to cure its breach of written warranties is unnecessary or futile.
7 Defendants knew, reasonably should have known, or were reckless in not knowing of the
8 defective NVIDIA GPUs and MCPs and their inability to perform as warranted, but nevertheless
9 failed to rectify the situation or failed to disclose it to Plaintiff and Class members. Further,
10 Plaintiff has provided Defendants with a written request to cure such breaches. Any remedies
11 available through informal dispute settlement procedures would be inadequate under the
12 circumstances. Accordingly, any requirement under the Magnuson-Moss Act or otherwise that
13 Plaintiff resort to informal dispute settlement procedures or afford Defendants a reasonable
14 opportunity to cure its breach of written warranties is excused or has been satisfied.

15 69. As a result of Defendants' breach of written warranties, Plaintiff and Class
16 members have sustained damages and other losses in an amount to be determined at trial.
17 Plaintiff and Class members are entitled to recover damages, specific performance, diminution in
18 value, costs, attorneys' fees, rescission, and other relief as is deemed appropriate.

19 **FOURTH CAUSE OF ACTION**

20 **Money Had and Received and Unjust Enrichment** 21 **(Against All Defendants)**

22 70. Plaintiff, on behalf of himself and all Class members, incorporates and realleges
23 paragraphs 1-69 as though fully set forth herein.

24 71. For the reasons set forth above, Defendants have profited unjustly from their sale
25 of defective Class Notebook Computers and their failure to repair them as the law requires, and it
26

1 would be unfair for Defendants to retain the profits they have unjustly earned at the expense of
2 Plaintiff and the Class.

3 72. Due to Defendants' illegal conduct, Plaintiff and Class members conferred
4 economic benefits on Defendants. Defendants received and retained these benefits under such
5 circumstances that it would be inequitable and unconscionable to permit them to retain some or
6 all of these benefits without returning their reasonable value to Plaintiff and to Class members.

7 73. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and
8 Class members suffered injury and therefore seek an order directing Defendants to return to them
9 the amount each of them improperly were required to pay to Defendants, plus interest thereon.

10 **FIFTH CAUSE OF ACTION**

11 **Declaratory Relief** 12 **(Against All Defendants)**

13 74. Plaintiff, on behalf of himself and all Class members, incorporates and realleges
14 paragraphs 1-73 as though fully set forth herein.

15 75. An actual controversy over which this Court has jurisdiction now exists between
16 Class members and Defendants concerning their respective rights, duties and obligations for
17 which Plaintiff desires a declaration of rights under the applicable contracts and express and
18 implied warranties, as detailed herein.

19 76. Plaintiff contends Defendants are obligated to repair or replace the common
20 alleged defect here at issue in all Class Notebook Computers. Plaintiff further contends
21 Defendants breached these obligations by causing Plaintiff and Class members to receive
22 notebook computers worth less than those that conform to the promises contained in such
23 agreements or by refusing to repair or replace the defective NVIDIA GPUs and MCPs in their
24 notebook computers.

78. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their respective rights and duties. Plaintiff and many Class members own notebook computers equipped with NVIDIA GPUs and/or MCPs that are defective in materials or workmanship. Plaintiff and Class members have suffered damages at the time of or since their purchases, or may have to pay costs for such repairs.

WHEREFORE, Plaintiff, both individually and on behalf of all Class members, prays for judgment against defendants, and each of them, jointly and severally, as follows as appropriate for the particular cause of action:

- COMPLAINT FOR FRAUDULENT BUSINESS PRACTICES, BREACH OF WARRANTY, AND JURY TRIAL DEMAND

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims so triable.

Dated: September 15, 2008

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